

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ARNOLD B. KITCHEN,

Plaintiff,

v.

PIERCE COUNTY SHERIFF'S
DEPARTMENT, *et al*,

Defendants.

Case No. C06-5186RJB-KLS

ORDER DIRECTING CLERK
TO DISMISS PETITION
WITHOUT PREJUDICE

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the Court upon plaintiff's motion regarding voluntary dismissal of action without prejudice. (Dkt. #8). After reviewing plaintiff's motion and the record, the Court hereby does find and ORDERS as follows:

Under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 41, plaintiff has the right to voluntarily dismiss his case without order of the Court when no answer or motion for summary judgment has been filed by an adverse party. Fed. R. Civ. P. 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992). A plaintiff may voluntarily dismiss an action "at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs," without a court order. Fed. R. Civ. P. 41(a)(1).

1 Procedurally in this case, defendants have not yet been served with the complaint. Accordingly,
2 pursuant to Fed. R. Civ. P. 41(a)(1), plaintiff's motion to dismiss (Dkt. #8) hereby is GRANTED.

3 The Clerk is directed to dismiss this matter without prejudice and to send a copy of this Order
4 to plaintiff.

5 DATED this 5th day of July, 2006.

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9 Karen L. Strombom
10 United States Magistrate Judge
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